

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Charles Green, #200072,	)	C/A No.: 3:10-cv-3162-JFA-JRM
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
Sheriff Leon Lott, and Deputy Sheriff	)	
Tom Hodges;	)	
	)	
Defendants.	)	
	)	

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The *pro se* petitioner, Charles Green, brings this civil action pursuant to 42 U.S.C. § 1983 alleging that his constitutional rights were violated through the use of excessive force during his arrest on January 17, 2008. This matter is before the court on the Defendants' motion to dismiss for failure to prosecute.

The Magistrate Judge assigned to this action<sup>1</sup> has prepared a thorough Report and Recommendation and opines that Defendants' motion to dismiss for failure to prosecute should be denied. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation. Defendants' motion to dismiss stems in part from Plaintiff's failure to cooperate during his deposition. Plaintiff has made three requests for counsel to be appointed to assist him in his case.

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<sup>1</sup> The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b)(1).

The Magistrate concluded that Plaintiff's failure to cooperate during the deposition was due in part to his confusion regarding Plaintiff's pending motions for appointment of counsel. The Magistrate therefore granted Plaintiff's third motion for appointment of counsel in part and appointed counsel for the limited purpose of representing Plaintiff during the taking of his deposition. Robert J. Butcher of the Camden Law Firm was appointed and has filed a notice of appearance in this case.

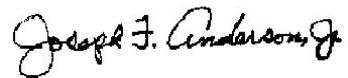
The Defendants were advised of their right to file objections to the Report and Recommendation, which was entered on the docket on December 7, 2011. The Defendants have not filed any objections. In the absence of specific objections to the Report of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

After carefully reviewing the applicable laws, the record in this case, and the Report and Recommendation, this court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The Report is incorporated herein by reference.

Accordingly, the Defendants' motion to dismiss is denied. The Plaintiff is directed to participate in the taking of his deposition should Defendants attempt to do so again. Appointed counsel shall assist Plaintiff during the taking of his deposition. Finally, the court repeats the Magistrate's warning that Plaintiff is responsible for prosecuting the present action and should he fail to do so, his action may be dismissed. *See Fed. R. Civ. P. 41(b).*

IT IS SO ORDERED.

January 9, 2012  
Columbia, South Carolina



Joseph F. Anderson, Jr.  
United States District Judge